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IN THE

SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM, 1967.

HANSEL WALLACE,
Petitioner,

vs.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Certiorari to the Supreme Court of Appeals for the Commonwealth of Virginia and the Corporation Court of Bristol, Virginia.

PETITION FOR A WRIT OF CERTIORARI.

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PETITION FOR A WRIT OF CERTIORARI.

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Hansel Wallace, your petitioner, was convicted of illegal picketing in the Corporation Court for Bristol, Virginia, sentenced to a fine of $300.00 and a jail sentence for six months.

The proof of your petitioner's alleged illegal picketing showed that he held a sign directly in front of his chest while standing off of the pavement of a road in the area of a strike in Bristol, Virginia. The sign read, "Tate, we will remember you."

The proof affirmatively shows that petitioner did nothing else, and that he did not obstruct pedestrian or vehicular traffic. He held the sign for approximately 20 seconds.

The conviction was based solely upon the exhibiting of this sign, the Virginia court holding that this language in and of itself constituted threatening language under the terms of their statute.

Your petitioner has pursued his remedy of appeal to the Supreme Court of Appeals of Virginia, which Court affirmed the judgment of the lower court by an order dated October 10, 1967.

II.

JURISDICTION.

The jurisdiction of this court is invoked under the Constitution of the United States.

Amendment I:

"Congress shall make no law respecting establishment of religion or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition the government for a redress of grievances."

Fourteenth Amendment:

"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within this jurisdiction equal protection of the laws."

III.

THE QUESTION.

The question presented is whether the Commonwealth of Virginia has denied Hansel Wallace his right of freedom of speech and due process through his conviction for illegal picketing under proof which showed only that he held a sign reading, "Tate, we will remember you", and absent any other proof of criminal conduct.

IV.

STATUTES AND REGULATIONS INVOLVED.

Virginia Code.

§ 40-64. Preventing persons from pursuing lawful vocations, etc.; illegal picketing; injunction.—No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public ways.

When a strike or lockout is in progress, no person who is not, or immediately prior to the time of the commencement of any strike or lockout was not, a bona fide employee of the business or industry being

picketed shall participate in any picketing or any picketing activitiy with respect to such strike or lockout.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly.

Notwithstanding the punishments herein provided any court of general equity jurisdiction may enjoin picketing prohibited by this section, and in addition thereto, may enjoin any picketing or interference with lawful picketing when necessary to prevent disorder, restrain coercion, protect life or property, or promote the general welfare."

V.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT AND SPECIFICATIONS OF ERROR.

1. The holding of the Supreme Court of Appeals of the Commonwealth of Virginia is in direct conflict with the rulings and decisions of this court, and more particularly **Cafeteria Employees Union, Local 302 v. Angelos**, 320 U. S. 293, 64 Supreme Court 126, 88 Lawyers Edition 58; **Leland Bus v. Locals 406, 406-A, 406-B, and 406-C, National Union of Operating Engineers AFL-CIO**, DC, La. 1956, 145 Fed. Sup. 316; **Printing Specialties & Paper Convertors Union, Local 388, AFL v. LeBaron**, C. A. California 1949, 171 Fed. 2d 331, Certiorari Dismissed, 69 Supreme Court 884, 336 U. S. 949, 93 Lawyers Edition 1105.

VI.

ARGUMENT.

The conviction of Hansel Wallace in the State Court was based solely upon his exhibiting a sign in a place where he had a right to be. The sign read, "Tate, we will remember you". Wallace held the sign for approximately 20 seconds. Tate was a fellow employee who had been exhibiting obscene gestures toward the picketing employees as he drove by. Upon seeing the sign held by Wallace, Tate cut a dip at Wallace with his truck and struck the sign with a sideview mirror. The police witnessing the event immediately arrested Tate for assault with a vehicle and Wallace was asked to appear as a witness against him. When Wallace appeared as a witness, he was served with a State Warrant and charged with illegal picketing. The case against Tate was dismissed and the charge against Wallace sustained by conviction, a $300 fine and a six months jail sentence.

The conviction denied Wallace his right of freedom of speech and due process under the Federal Constitution.

The language of the sign was not such that would be reasonably calculated to cause a "breach of the peace", nor was it such as to be "fighting words", but was more of an indefinite meaning or undefined slogan as in the case of **Cafeteria Employees Union, Local 302 v. Angelos**, 320 U. S. 293, 64 Supreme Court 126, 88 Lawyers Edition 58, wherein this court held that loose language and undefined slogans could not in themselves be the basis for an injunction for illegal picketing.

The holding of the Supreme Court of Appeals for the Commonwealth of Virginia in affirming the conviction was contrary to this court's interpretation of the Federal Constitution—Amendments I and XIV.

The case is of simple origin and involves the constitutional right of not only the petitioner, Hansel Wallace, but indirectly the rights of fellow union members in their exercise of peaceful and lawful picketing activities.

The entire transcript is short and is attached as Appendix "A".

Wherefore, your petitioner prays that a writ of certiorari be issued by this court to the Supreme Court of Appeals for the Commonwealth of Virginia and the Corporation Court of Bristol, Virginia, directing those courts to certify and send to the this court for its review and determination a full and complete transcript of the record and proceedings in Commonwealth of Virginia v. Hansel Wallace, and that judgment of the Supreme Court of Appeals for the Commonwealth of Virginia be reversed by this court.

Respectfully submitted,

HANSEL WALLACE,

By .....

DAVID S. HAYNES,
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26½ Sixth Street,
Bristol, Tennessee.

Of Counsel:

CURTIN, HAYNES & WINSTON,
26½ Sixth Street,
Bristol, Tennessee.

1* **APPENDIX A.**

VIRGINIA:

In the Corporation Court of the City of Bristol.

Commonwealth of Virginia,
Plaintiff,
vs.
Hansel Wallace,
Defendant.

Appearances:

Dick B. Rouse, Esq., Bristol, Virginia, Commonwealth's Attorney.

David S. Haynes, Esq., Bristol, Tennessee, and Daniel W. Bird, Jr., Esq., Bristol, Virginia, Counsel for Defendant.

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3 The following cause came on to be heard on the 4th day of May, 1967, before the Honorable Joseph L. Cantwell, Jr., Judge of the Corporation Court of the city of Bristol, and a jury of five.

Mrs. Alice R. Gordon, court reporter, was duly sworn.

The Court: The charge is violating Section 40-64 of the Virginia Code, commonly called the Right-to-Work Law.

The plea is not guilty?

Mr. Haynes: Not guilty, Your Honor.

(Thereupon, a jury of five was duly impaneled and sworn.)

(All witnesses were duly sworn and permitted to remain in the courtroom.)

(Opening statements were made on behalf of both parties.)

Mr. Rouse: Come around, Mr. Tate.

Mr. Haynes: If it please the court, Captain Kristofek is the prosecutor and, I assume, I would think that he would have to testify first if he were going to testify for the commonwealth.

The Court: Well, that's not a rule in Virginia, Mr. Haynes. We don't follow that rule.

Mr. Haynes: All right, sir.

4 The Court: The sequence is up to the attorney on each side, he can make his own choice.

ROBERT G. TATE,

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Rouse:

Q. Please state your name and age, Mr. Tate.

A. Robert G. Tate, 52 years old.

Q. Where do you live, Mr. Tate?

A. I live Route 5, Bristol, Virginia.

Q. Is that in Washington County?

A. That's in Washington County, Virginia.

Q. Uh huh. How long have you been an employee of Monroe Calculating Company?

A. Three year this past March 2nd.

Q. Mr. Tate, were you a member of this union?

A. I was.

Q. And were you a member of the union when the strike was called?

A. Yes, sir.

Q. Now, when, when the strike took place, that is, the walk-out, did you choose to continue your employment there?

A. I did, yes, sir.

Q. And you came in to work at what time a day?

A. Well, I'd get to work approximately a quarter till seven of a morning.

Q. And what time would you get off?

A. At 3:30 in the afternoon.

Q. Was there a number of employees who chose to continue working?

A. It was several, yes, sir.

Q. Uh huh. Now, on the approaches to your work and leaving work, what were the conditions relative to the members of the union being at or near the plant? Just tell the court and the jury. Look up toward Judge Cantwell.

A. You mean how many?

Q. Well, just describe their actions.

Mr. Haynes: Your Honor, we would object to the questions, the general conditions up there. The union isn't on trial today; Hansel is.

The Court: Well, sustained. It should be confined to this occasion in question.

Q. (By Mr. Rouse) Mr. Tate, on the——

The Court: That is, any contact between him and the accused, and the circumstances surrounding those occasions.

Q. (By Mr. Rouse) Mr. Tate, where did those occurrences take place?

A. Just below the underpass from Monroe.

Q. Coming toward the Lee Highway?

A. Yes, sir.

6 Q. What were the conditions there relative to automobiles being parked and people there?

A. Well, there was always a crowd on each side of the highway, and they were out on the hard surface, so I would shift my gear down, truck down into second gear, you know, for precaution purposes, and they were crowding me that afternoon. Well, the sign was up two afternoons.

Q. Well, now, what was the sign?

A. They had my name over the top in big letters and, "We will remember you," written below.

Q. And you say that had taken place two days?

A. Two days, yes, sir.

Q. And then what happened there on this particular afternoon?

A. Well, they, as I say, they were crowding me and he had that sign out in front of me there and I probably made, I might have made a bobble, I couldn't say I didn't, but they were crowding me, and the officer pulled me over.

Q. Well, what happened to the sign?

A. Well, he hit down over the windshield with the sign.

Q. Well, now, you say "he", who do you mean?

A. Mr. Wallace.

Q. Uh huh. You know Mr. Wallace, do you?

A. I know him now, but I didn't before.

Q. You didn't before?

7 A. No, sir.

Q. All right, sir. And what occurred then?

A. The officer pulled me over to one side and asked me for my driver's permit, which I gave to him, and Wallace came up while Kristofek was in the truck with him, and he said, now, I can't exactly remember what he said, but he said to these words, "I will remember you."

Q. He said that to you or to Mr.——

A. "I'll see you later, old man," to that.

The Court: I didn't understand who said that.

The Witness: Wallace.

Mr. Rouse: The defendant.

The Court: When was that?

The Witness: To the best of my—excuse me.

The Court: I didn't understand. What was that with reference to the sign?

Mr. Rouse: While Mr. Kristofek and he were sitting in the car and he was showing Mr. Kristofek his driving permit immediately after.

The Court: That was after it happened.

Q. (By Mr. Rouse) And I believe that Mr. Kristofek did charge you with an offense, did he not?

A. Yes, sir; yes, sir.

Q. And you came on to town with Kristofek?

A. Yes, sir.

8 Q. On that occasion. And you were tried for that offense?

A. Yes, sir.

Q. Now, approximately how many people were around

there in that crowd immediately after you were arrested, would you say?

A. Oh, I'd say there was 75 to 80.

Q. Were they strikers?

A. I'd say they was, yes, sir.

Q. When you would, when you passed on that day going to your work or returning from your work, did anyone make any remarks to you or holler at you as you passed?

A. On that particular day?

Mr. Haynes: Your Honor, we except unless he claims that Hansel did.

The Court: Sustained, unless it's connected with the accused, the accused is connected with it.

The Witness: I was called names.

The Court: Sustain the objection. You'll have to wait until he asks you another question.

Mr. Rouse: That's all right. I'll withdraw the question. You may ask him, Mr. Haynes.

Cross-Examination,

By Mr. Rouse:

Q. Mr. Tate, with the fire over up there and with just a little bit of smoke left, I am not going to ask you many questions. But the sign that you said was up on two occasions, you are not saying that Hansel had it the first occasion, are you?

A. I don't know who had it the first time.

Q. I wouldn't have thought that you'd really remember. And then you are not accusing him of holding it the first day. You just know he had it the second?

A. I know he had it the second day.

Q. And when you drove through there with your truck and stated that you might have made a bobble, in other words, your truck did, as far as you are able to recall, move slightly to some extent in the direction of the sign?

A. It is possible that I made a bobble.

Q. And, and that's of course, what the officer saw and that's why he stopped you and charged you with assault with the truck or automobile, isn't it?

A. Yes, sir.

Q. Now, the sign said, "Tate, we will remember you," and I remember very explicitly your testimony in your own trial that you weren't afraid of that sign or the words on it, were you?

A. I certainly was not.

Q. And I am sure that the fact that your name was slashed up and called to the attention of the people around there, of course, made you angry to some extent. It would only be natural.

A. Now, what was that question?

Q. I say the fact that your name was the one that was slashed up, that, of course, made you, you didn't like it.

A. Well, I know how to control my temper if that's what you mean.

Q. All right. And the bobble or swerve that you described was certainly a reaction to that. And you got stopped very shortly after you swerved or bobbled, didn't you?

Q. The officer stopped me.

Q. And the, whatever conversation you and Mr. Tate had there was after the officer came and was standing there questioning you.

A. He was sitting in the truck with me, Kristofek.

Q. Now, of course, at that time Hansel wasn't arrested or charged insofar as you know?

A. As far as I know he wasn't.

Q. Now, how far on past the sign did you go before the officer stopped you?

A. Oh, I'd say ten feet, eight to ten feet.

Q. All right. Was the officer about that close when he stopped you?

A. I don't even know where he was standing, I couldn't see.

11 Q. When did you first see him?

A. He was out in the middle of the road coming across the road. He probably was on the other side.

Q. And Captain Kristofek was not the only officer up there in that immediate vicinity. There was some other officers, weren't there?

A. I didn't see any other officers.

Q. All right. You heard Officer Smith testify, didn't you?

A. Well, he might have been, but I say I didn't see him.

Q. That's all. Thank you.

The Court: Call your next witness.

Mr. Rouse: Yes, Your Honor. Just a second. Come around, Mr. Smith.

NORMAN SMITH,

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Rouse:

Q. Mr. Smith, are you a member of the Bristol, Virginia Police Department?

A. Yes, sir.

Q. How long have you been so employed?

A. Sixteen years.

Q. Were you on duty at, at or near the Monroe Calculating Company on the afternoon of March 2nd

12 at approximately 3:30, 3:45 in the afternoon?

A. Yes, sir.

Q. Where were you located?

A. I was on the west end of the underpass at Monroe, the entrance to the Atlas Concrete drive.

Q. What did you observe there? Was there a crowd there?

A. Yes, sir, they were 50 people or better lined on the south and north curb lines of the street of Valley Drive. They was vehicles parked on both sides of the street and they were standing on the street side of the vehicles lined up in a line down the Valley Drive.

Q. And did you observe the gentleman sitting over there by Mr. Haynes?

A. Yes, sir.

Q. How long had you observed him there in the crowd?

A. I'd say ten or fifteen minutes before this occurred, the incident. He was standing there with another man and some women and a Mrs. White.

Q. Did he have a sign?

A. This lady, Mrs. White, was holding the sign at first, and then he taken the sign.

Q. Uh huh. I'll ask you if this is the part of the sign?

A. Yes, sir.

Q. Hold it up so that the jury can see it.

Now, Mr. Smith, was there another portion to that
13 sign?

A. Yes, sir, they was a portion about this tall went on top that was attached to this which folded down behind the sign which could be flipped up on top. The top part of the sign had "T-a-t-e" spelled on it. It was Tate.

Q. All right. Now, just tell the court and the jury what occurred there leading up to this incident and what was done by Mr. Wallace.

A. Well, Lt. Honaker and I were stationed at the drive to Atlas. As I stated, several people were lined on the streets and we were keeping them back out of the driving portion of the street so traffic could move. So right after 3:30, I'd say approximately 3:40, they would, when the cars would come out of the plant, some would turn left and go towards the Old Abingdon Highway, and some

would make a right turn coming west on Valley Drive towards Lee Highway, and they would pick out the ones that were working. So they'd say that was——

Mr. Haynes: Now, Your Honor, we except to this general talk about what they or unidentified persons might or might not have been doing. This case, this is Hansel charged here and unless he claims that Hansel did something there——

The Court: The occasion you are testifying about, was Mr. Wallace present?

The Witness: Yes, sir, he was present.

14 The Court: And was that this same time or another day?

The Witness: Same day.

The Court: Overrule the objection.

Q. (By Mr. Rouse) And immediately before this occurrence, wasn't it?

A. Yes, sir.

Q. All right. Now, what was said there and what was done?

A. So when a car would come through, they'd say, "Here comes one," which would be someone that was working.

Mr. Haynes: Excuse me. I hesitate to object again on the, generally the same basis, but unless he can say who is talking about, this "they" doesn't tell us enough to where we could defend against any kind of testimony like this. If he can say who he is talking about, it would give us some opportunity.

The Court: Sustain the objection to the extent that the witness will have to identify the, whoever the actors were in a general way with reference to whether anything that he says took place was from a group in which Mr. Wallace was present.

Mr. Rouse: That's what he testified to.

Q. (By Mr. Rouse) Who was in the group there with Mr. Wallace?

A. There was several in the group with Mr. Wallace.

Q. Well, you named some of them a few minutes ago.

A. Yes, sir, the only ones I knew standing right in the group with Mr. Wallace was Mrs. White, I did know her, but I knew several faces which I didn't know names.

Q. Well, now, is this the group that you are talking about that would hold that sign up?

A. Yes, sir.

Q. All right. And what would they do with the sign?

A. Well, they would hold the sign up on some of the cars that would come out, they'd hold it in this position across it (demonstrating) out in the portion of the street where they was standing on the curb. Then when Mr. Tate came out of the driveway, the crowd hollered, "Here he comes." He was driving a blue Dodge pickup, so he came through the underpass, the back part of the sign was flipped up, Mr. Wallace was holding the sign at that time. It had "Tate" on it, and he was holding it out. And just as his truck came up, the sign hit the truck and the truck and the sign made contact. So Captain Kristofek who was standing approximately a hundred and fifty feet above me walked out in the street and pulled Mr. Tate over.

So when Mr. Tate was pulled over by Captain Kristofek, they was a crowd on it from my side of the street on the south side began to run towards the direction of Mr., Captain Kristofek and Mr. Tate. And also several from where Mr. Wallace was and also Mr. Wallace. They went towards the vehicle so I left immediately in the driving portion of the street advising the group they would have to get out of the street and go back. They began to make "hassing" noise and calling names and I advised them they couldn't do that.

Mr. Haynes: Your Honor, we except. It's after the occurrence that he is testifying about. It's unnamed and un-

identified people that aren't on trial here. Unless he claims that Hansel was doing some of that.

The Court: Overrule the objection.

Q. (By Mr. Rouse) Go ahead.

Mr. Bird: Exception.

The Witness: Well, they were calling them scabs and one or two began to use profanity which I advised them at that time if they made another outburst that I would place them under arrest for the same. I moved them on back down to where they were originally and so Captain Kristofek taken Mr. Tate and left and went to headquarters.

I don't know what happened from thereafter. I stayed with the crowd until the Monroe went back to work and the crowd left.

Q. (By Mr. Rouse) Will you file this as an exhibit to your testimony, Captain Smith?

A. Yes, sir.

17 (Exhibit No. 1 was marked for identification and filed.

The Court: Mr. Tate was tried in Bristol, Virginia Police Court, was he not?

The Witness: Yes, sir.

Mr. Rouse: You may ask him.

Cross-Examination,

By Mr. Haynes:

Q. Lieutenant, as I understand, recall your testimony in Municipal Court, you testified that Hansel was standing holding the sign with both hands.

A. Yes, sir.

Q. And that he was on the edge of the pavement.

A. Yes, sir.

Q. And there was room for vehicular traffic to pass and traffic was, in fact, going on through and passing as it drove down this area, wasn't it?

A. Yes, sir.

Q. And as Mr. Tate came close, his name was flipped up, and his vehicle cut or swerved in the direction of the sign and the sign and his vehicle made contact.

A. Yes, sir.

Q. And you, of course, didn't arrest Hansel there?

A. No, sir.

Q. And Officer Kristofek didn't arrest Hansel?

18 A. Captain Kristofek.

Q. Captain, I am sorry, Captain Kristofek didn't arrest Hansel there?

A. Yes, sir.

Q. He arrested Mr. Tate and took him down to headquarters?

A. Yes, sir.

Q. Mr. Tate hasn't advised you as an investigating officer that he was in any way afraid of this sign or the words on this sign, has he?

A. No, sir.

Q. Thank you, Lieutenant.

Mr. Rouse: Come around, Mr. Honaker.

JOE HONAKER,

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Rouse:

Q. Your name is Joe Honaker?

A. Yes, sir.

Q. And you are a member of the Bristol, Virginia Police Department?

A. Yes, sir.

Q. How long have you been so employed?

A. Twenty years.

Q. Mr. Honaker, were you at the, at or near the Monroe

Calculating Company on March the 2nd at ap-
19 proximately 3:30 to 3:45?

A. Yes, sir.

Q. Just tell the court and the jury there what took place relative to the incident in which Mr. Wallace and Mr. Tate were involved. Just describe the circumstances there.

A. I was standing west of the underpass on Valley Drive on the north side of the street. They were a number of people, approximately 50 or better, gathered on each side of the street on Valley Drive standing close to the blacktop surface on the shoulder part of the road. A number of the people were hollering and some were laughing and carrying on, different things were said, but the first time I noticed Mr. Tate, I was, looked up east on Valley Drive and I noticed Mr. Tate's truck which was a blue, light blue Dodge truck—and it's a little bigger than a half-ton truck, has a wooden-type bed on it—came out of the driveway at Monroe and came down west on Valley Drive at a very slow speed.

At that time, I heard the name "Tate, here comes Tate" hollered several times. And I continued to watch the vehicle till it passed me and as it came down near me, the crowd moved closer to the hard surface of the road. At that time, I said to the ones that were near me to move back, and I turned my head then west on Valley Drive and I observed this gentleman here whom
I do not know holding this sign. And I continued to
20 watch Mr. Tate's vehicle till it got down near him,
and the crowd had moved in a little closer on both sides of the road, and at that time, Mr. Tate did move to his right and I noticed the sign came in contact with the truck. And Captain Kristofek was standing on the south side of Valley Drive immediately, directly across in front of where Mr. Wallace was standing.

Captain Kristofek at that time motioned for Mr. Tate to stop and went over to the truck. At that time, the

crowd near me began to holler quite loud. They would holler, "That a boy, Captain Kristofek. Do your stuff. Arrest him." And then two or three would holler and say, "He's getting what's coming to him. Captain Kristofek is going to do the job." And some of the crowd moved down where the truck was stopped and I did not move. I stayed there and tried to control the people from moving.

Q. What was on the sign other than that part right there, Mr. Honaker?

A. This particular sign had another piece here approximately four or five or maybe six inches high that was folded down and I could see that Mr. Wallace moved this up once with his hand, he folded it up, and on the top part had the letters similar to this, but it was larger. It just said, "Tate, T-a-t-e." Then he would fold it back down.

Mr. Rouse: You may ask him.

21 **Cross-Examination,**

By Mr. Haynes:

Q. Lt. Honaker, actually who was closer to this occurrence, you or Lt. Smith or Captain Kristofek?

A. Speaking of the——

Q. Distance from where it happened.

A. Captain Kristofek.

Q. He was the closest to it?

A. Yes, sir.

Q. Uh huh. And next, this distance, would you say you or Lt. Smith?

A. Approximately the same there. I was——

Q. About the same?

A. I was on the same side of the street that this gentleman was standing on and Lt. Smith was on the opposite side in front of me, but we were standing more or less facing each other.

Q. And when the crowd moved up a little closer to the paved portion of the street, there was still plenty of room for vehicular, I don't mean to get too close here to you, still close enough for vehicular traffic to go down and pass and it did, didn't it?

A. Yes, sir, two vehicles could move by.

Q. All right. And actually passed one another?

A. Yes, sir, I'd say they could.

22 Q. All right. And when you saw Mr. Tate move to his right, was he then traveling away from you or coming toward you?

A. He had passed me and was traveling away from me. He was going west. He had already passed me.

Q. And at that time there was still room for two vehicles to actually pass if they moved slowly?

A. Yes, sir.

Q. And there wasn't any other vehicle that caused him to swerve to his right at that particular time?

A. Not as I recall, no, sir.

Q. And the only, he swerved and he swerved toward that sign, didn't he?

A. He moved in the direction where he was standing, but how close I couldn't say. It was, as I say, people were more or less in my view all the way down. I could see——

Q. You could see the truck move to the right?

A. I could see the truck, yes, sir.

Q. And you say then after it moved to the right, the sign and the truck did make contact?

A. Yes, sir.

Q. Now, you are not saying that Hansel took a swing and leaned out and swung over the windshield or anything like that, are you?

A. No, sir.

Q. All right, thank you.

23 Mr. Rouse: Come down.

Come around, Captain Kristofek.

ANDREW KRISTOFEK

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Rouse:

Q. Your name is Andrew Kristofek?

A. Yes, sir.

Q. You are a member of the Bristol, Virginia Police Department?

A. Yes, sir.

Q. And what rank do you hold?

A. Captain.

Q. How long have you been so employed?

A. Twenty years.

Q. Were you present at or near the Monroe Calculating Company on March 2nd, 1967, at approximately 3:30 to 3:45?

A. Yes, sir.

Q. Just tell the court and the jury what took place there that afternoon.

A. I was standing on the south side of East Valley Drive about approximately 150 feet, would be west of the underpass, observing the traffic coming east and west on Valley Drive from Monroe, and city traffic. I observed and see a 1963 Dodge three-quarter ton truck, light
24 blue. There was people and cars parked on the north and south side of Valley Drive approximately between 70 to 100 picketers, people on both sides of the street, men and women, standing off the hard surface. I seen this young man over here, dark suit and black tie, white shirt, Hansel Wallace, holding a sign. He was on the north side of the street approximately 75 feet west of the underpass holding a sign up as this light blue Dodge truck, '63 model, approached him. He held it in this fashion (demonstrating) and flipped it up in the air and

dropped it back down. And approximately as it hit, as the truck got near him, it cut a dip at him. I say dipped from the line of traffic, swerved the truck to the right. He had a card struck, there is a mirror at both sides of the truck, struck it, and I immediately stepped out in the street, stopped the truck, pulled him over, and it was driven by this young man over here, Mr. Ted—Mr. Tate. I asked him for his driver's license which he gave them to me. I told him that he was charged with attempt to felonious charge with a vehicle against this young man over here, Hansel Wallace. I went around the truck on the north side. I asked this young man for his name, and his address, which he gave me, 841 East Mary Street, Bristol, Tennessee. This other young man in that tan sweater sitting over there in the blue shirt, his name is White, was also standing there and there was two other men. I got in the truck and these words were spoken. I heard them, but I didn't know who made it because Hansel Wallace was standing right near the door as I got in the cab, I was in the driver's side, he said, "Old man, we'll remember you." And Mr. Tate said to me while I was in the cab, he said, "Do you hear that?" I said, "Yes, move on. We are going to headquarters." We continued on down to headquarters which I issued a warrant for him, charging him, and he made bond, and the trial was set for the 23rd day of March.

Q. And he was tried on that date?

A. Yes, sir.

Q. And Mr. Kristofek, now what else was, is that the sign over there that's laying there?

A. Yes, sir, that's my signature on it.

Q. Uh huh. And now, what other part was there to that sign?

A. There was another piece on top here which is not on here. Mr. Tate—Mr. Wallace, that young man White, come to headquarters after I had Mr. Tate down there and

I asked him to see if he could locate this sign or a sign similar to which he was holding. He said, "I'll go up there and get it." He comes to headquarters and he brought me this sign here.

Q. Was that all of the sign that you saw there that day?

A. No, sir, there was another piece on top.

26 Q. And what was on that piece?

A. Tate, T-a-t-e, in large letters about approximately 12 inches in length or six inches in width.

Mr. Rouse: You may ask him.

Cross-Examination,

By Mr. Haynes:

Q. Captain, had you seen the sign out there before this date?

A. No, sir.

Q. When you say Mr. Tate dipped at the sign, Hansel didn't strike out or lean out or push that sign down over his windshield or anything like that, did he?

A. No, sir.

Q. And do you recall asking Hansel to come down and be a witness for the assault charge?

A. Yes, sir, I summonsed him as a witness.

Q. And then, and he came?

A. Yes, sir.

Q. And did you ask him to bring the sign?

A. That night or that evening when this took place up there on Valley Drive, he come to headquarters with White, and I told him to go up there around there down in the strike area and see if he could recover that sign. Which I also sent officer up there, Lt. Smith, to go up there and see if they could recover that. Hansel

27 come to the office, the police department and brought me that sign.

Q. Brought it to you voluntarily?

A. Yes, sir.

Q. And has he, as far as you are concerned, been cooperative in your investigation of the entire matter?

A. Yes, sir.

Q. I believe when he came to be a witness, then a warrant was given him, and he was cited to come in and defend on an illegal picketing charge?

A. Yes, sir.

Q. Mr. Tate never has told you that he was afraid of this sign or the words on it at all, has he?

A. No, sir.

Q. All right, thank you, sir.

Mr. Rouse: That's all, Captain Kristofek. Come around, Chief Stover.

JOHN STOVER,

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Rouse:

Q. Your name is John Stover?

A. Yes, sir.

Q. Mr. Stover, what is your employment?

A. Chief of police, city of Bristol, Virginia.

Q. How long have you been connected with the
28 Bristol, Virginia Police Department, and how long have you been chief of police?

A. I have been connected since 1935 except for five years during World War II. I became chief of police in January, 1946.

Q. Mr. Stover, were you at or near Monroe Calculating Company on March 2nd, 1967, at approximately, in during the day?

A Yes, sir.

Q. What were you doing there?

A. About 3:15 to 3:45 something like that in the afternoon.

Q. Were you taking pictures of the activities of the pickets on that occasion?

A. Yes, sir. The early part of the period that I was up there, I took most of my pictures from the entrance of Valley Drive, mostly on facing eastward and some facing in a westerly direction and then moved down closer to the west end.

Q. Do you have film of the area in which this occurrence took place?

A. Yes, sir, on that day and the following day, too.

Q. Will you show those film?

A. Yes, sir.

The Court: That was at the time that this event is alleged to have taken place?

Mr. Rouse: Not at the immediate time that it was
29 taken, but they were taken during——

The Court: When was it?

Mr. Rouse: On March the 2nd.

The Court: I mean at what time, at what hour with reference to the time at which this took place?

The Witness: It started around 3:30, generally around about 3:30 and this, when the vehicles started leaving the plant and they were generally all gone by 3:40, 3:42 or 3, something like that.

The Court: Well, were you in the vicinity of the events that have been testified to on this trial at the time they took place with your camera? Does this picture show——

The Witness: It doesn't show the arrest, no.

The Court: The group present at these events?

Mr. Rouse: The groups, yes, sir. It doesn't show this particular event.

The Court: I mean does it show the scenes in the area where this event took place?

The Witness: Yes, sir.

Mr. Rouse: Yes, sir, I asked him that.

The Court: And at approximately the time that this event took place?

Mr. Rouse: That's what he just testified to.

The Witness: Yes, sir.

Mr. Rouse: Between 3:30 and 3:45 when the traffic
30 was coming out.

The Court: All right, is there any objection?

Mr. Haynes: Your Honor, we haven't had an opportunity to see the exhibit. We can't look at it if it's film matter without reviewing it. Of course, we would object to the general showing of the entire picket area up there. We'd want the portions of it to be limited to where Hansel was standing or the group he was standing, we'd want it to be limited to that. If he can, I don't know if he can isolate that or even find it on there if it is on there.

The Court: I think it would be the safe thing for us to do, the court and counsel and the accused in the absence of the jury to view it in the absence of the jury and then pass on its admissibility in the light of Mr. Haynes' questions. Suppose we stop and take a short recess.

You gentlemen of the jury, do not discuss the case with anyone nor allow anyone to discuss it in your presence.

Now, you all can, of course, be in the witness room or out in the hall, in the restroom, but don't come back in the area to our rear here where the sergeant's office is located so, and in that way, there will be no chance of you seeing any part of what's going on. I mean the sergeant's office with reference to preview of the film.

We'll call you back when we are ready.

(Thereupon, there was a short recess, after which
31 the following proceedings were had in the city sergeant's office, out of the presence of the jury.)

The Court: Any time you are ready.

The Witness (Chief Stover): The film has three speeds on it, slow speed, a normal and fast speed in order to rewind, and it also has a stop, a still picture feature, and, of course, then, it has the back up feature, the three

speeds on the back up, the reverse. It's set right now for the beginning of that afternoon, and I could speed it up if you want to get closer to 3:30.

The Court: Mr. Rouse, you can steer him until you get to what you want to present in evidence and let us know what it is you want to present.

(Thereupon, there was a discussion off the record, and the film was shown.)

The Court: Well, of course, all of that taken to the east is immaterial. What part of it, Mr. Rouse, would you like for the jury to see?

Mr. Rouse: Frankly, I don't care whether we show it or not. I thought that he had better pictures. He does have, but it's another date, the next day.

The Court: You are not asking then that the jury review it?

Mr. Rouse: No, sir, I'll withdraw it.

(Thereupon, court and counsel returned to the
32 open courtroom, and the following proceedings were had before the jury in open court.)

The Court: I might say for the benefit of the jury that the film didn't show anything material to this occasion on trial so that the commonwealth's attorney is not asking that the jury view the picture.

Mr. Rouse: The commonwealth rests.

The Court: Are you all ready to proceed with the defense evidence?

Mr. Haynes: Your Honor, we have a motion we would like to make in the absence of the jury if we might.

The Court: Gentlemen, go to your room, please. Mr. Sergeant, close the door.

(Thereupon, the jury retired from the open courtroom, and the following proceedings were had out of the presence of the jury.)

Mr. Haynes: If it please the court, comes now the defendant, Hansel Wallace, and moves to strike the evidence at the conclusion of the commonwealth's case and

relies on, primarily relies on two cases that have been decided in this unlawful picketing field. One is a Virginia case, **McWorter v. The Commonwealth,** 69 Southeastern 2nd 20 at 23. And the second one is the Supreme Court of the United States case which is cited in that McWorter case and approved, if the state cases still approve the Supreme Court cases, certainly it is relied on.

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It's **Cafeteria Employers Union, Local No. 302 v. Angelas,** 320 U. S. 293, 64 Supreme Court Reporter 126.

The Court: Sixty?

Mr. Haynes: Sixty-four, Supreme Court 126, and if you have the lawyer's edition, 88 Lawyer's Edition 58.

The McWorter case in construing the unlawful picketing statute approves the language in the Supreme Court case wherein it states that "Loose language or undefined slogans are not sufficient to constitute, for instance, a falsification of facts to make peaceful picketing unlawful and subject to injunction." And now the cafeteria employees' situation was that where the charge was that the use of loose language and really undefined slogans such as, I am not telling you they had these words in that case, they didn't, but they were slogans such as this, in other words, that in and of itself doesn't really mean a lot. Certainly isn't, they aren't words of threat in and of themselves. You could attach many, many connotations to that.

Mr. Rouse didn't particularly appreciate the fact that I pointed out that it is used on valentines, and I know that's an extreme illustration there and obviously under certain circumstances they could have a different meaning. But there is certainly, just as likely, there is a hypothesis of innocence which is just as reasonable as a hypothesis of guilt when those words were used under the circumstances as related today, just holding the sign with the man's name and not swinging

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it at him or striking it at him. So under these cases, that, we contend, represents no more than an undefined slogan or loose language which could have just as reasonably been, "We'll remember you, and we won't have anything to do with you; we'll ostracize you from our particular society and group," certainly isn't indicative of a threat to induce this man to quit his employment, which brings me to my second ground to strike, and that is, that there is no evidence in the record of an intent on the part of this defendant to induce this man to quit his employment.

Now, the threatening language under the Virginia code section has to be calculated to do one of two things—either prevent a man from hiring on, which, of course, would not apply here because Mr. Tate was employed, or it must be calculated to induce him to quit his employment.

Now, we submit that there is no evidence in the record that this language was such that reasonably would be construed to induce him to quit his employment.

He stated himself that he wasn't afraid of the language of the sign or the sign itself. He wasn't concerned about it; and he, I think, is the best example we have today, I guess, of a reasonable man putting a reasonable interpretation on the words. I'd say his interpretation under the circumstances that he knew them to be, would be about as logical interpretation of the words that we could give them. He stated they didn't frighten him, he wasn't afraid of the sign or the words and it didn't put him in fear. So it certainly didn't induce him to quit his employment. Absent obscene or libelous or what we have been, often called "fighting words", the words in and of themselves are simply not under the law sufficient to sustain a conviction.

The Court: Let the motion be overruled. It's a matter for the jury to determine under all the evidence.

Call back the jury, please.

Mr. Haynes: Exception.

The Court: Mr. Rouse, I don't recall whether you asked Mr. Tate his age when he was on the witness stand.

Mr. Rouse: Yes, sir, 52.

(Thereupon, the jury returned to the open courtroom, and the following proceedings were had before the jury in open court.)

The Court: Are you ready to proceed with the defense evidence?

HANSEL WALLACE,

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Haynes:

Q. State your name, please.

36 A. Hansel Wallace.

Q. Hansel, where do you live?

A. 841 East Mary Street.

Q. Are you married?

A. Yes, I am.

Q. What size family do you have?

A. Father of two.

Q. One on the way, I believe?

A. One on the way.

Q. I believe you were born and raised down below Blountville?

A. That's true.

Q. Where I am from. You work at Monroe now?

A. Monroe.

Q. And you were working during the strike, before the strike?

A. Before the strike.

Q. And you went out on strike?

A. I went on strike.

Q. Now, on March the 2nd, let me first ask you, had you had hold of that sign or been using that sign before March the 2nd?

A. No, sir.

Q. Had you known of the sign being up there in the area before that?

A. Yes, I know the sign was there the day before.
37 That was, I happened to be there on the first day of March, which was the day before, and I observed the sign being there.

Q. Okay. Now, on March the 2nd, did you have hold of the sign?

A. Yes, I did.

Q. And did you have hold of the sign as Mr. Tate approached—excuse me.

A. I got ahold of the sign approximately, oh, a few seconds before that this incident happened.

Q. And about how long total time did you actually have hold of that sign on?

A. From 30 seconds to one minute, I'd say.

Q. All right. Now, if you will stand up and show His Honor and the jury how you held the sign.

A. Well, I was standing off the blacktop approximately two, three feet, I don't know exactly, and I was holding the sign up in front of me with both hands something to this matter.

Q. All right. Now, there has been some description of the area up there, cars were parked along the road to some extent, weren't they?

A. Yes.

Q. Now, were they on or off the blacktop?

A. They were off the blacktop.

Q. They were off the blacktop, all right. Now,
38 there was another portion that had Tate's name on it, wasn't there?

A. There was.

Q. And did you put that up as the Tate sign flashed up?

A. Well, I can't really remember, but I probably did.

Q. Okay. Then what happened as Mr. Tate approached in his truck?

A. Well, I was standing beside the highway and as he approached the sign, he come real close to the sign, and he took a deep right or a swerve directly towards me.

Q. What did you do?

A. Well, I kind of swerved and turned my body and turned away to get out of the way of the vehicle and at that time, the sign come in contact with the truck.

Q. All right. Did you swing it at the truck?

A. No, sir.

Q. Or hit it at the truck in any way?

A. No, sir.

Q. At that time were you doing anything other than trying to get away?

A. Other than trying to get away from it, no, sir.

Q. Who were, one of these fellows standing nearby you?

A. Yes, sir, Wayne O'Neal was standing on one side or the other, I don't remember, I'd say within——

Q. Is he the one you almost ran over to get out——

A. I almost ran over him, I think, trying to get
39 out of the way.

Q. Okay. Excuse me. You can sit down there now. Now, had you seen Mr. Tate coming to and from on other days before this occurrence?

A. Yes, I had.

Q. Did you through raising this sign—did you make this sign?

A. No, sir.

Q. By raising this sign up with his name on it, did you have any intention to threaten him or his right to go ahead and cross the picket lines and go to work?

A. Certainly not, I had no intention of threatening the man.

Q. All right. What had you observed him doing and what was the meaning of that sign?

A. Well, I had observed of the evenings when he'd come out of the entrance of the plant and when he'd come down through the area in which we are speaking of here, he would make vulgar indications to the people standing along the road.

Q. What was that, his hand?

A. With his hand by raising one finger, the center finger.

Q. All right.

A. And that, to me, the sign was certainly no threat, was just a matter of not associating with him according to the way he was conducting hisself because the women and also children in the cars sitting along there. There was women standing along the road and Mr. Tate would make these signs at them, these indications at them of the evening. And that's all there was to it.

Q. All right. Had you known Mr. Tate before other than to see him come down through there under those circumstances?

A. No, sir, I didn't know him.

Q. Hadn't been any trouble between you and he since?

A. No, sir.

Q. And there is not going to be, is there?

A. No, sir.

Q. All right.

Mr. Haynes: You may cross-examine.

Cross-Examination,

By Mr. Rouse:

Q. Mr. Wallace, you saw this sign the day before this occurrence?

A. Yes, sir.

Q. And they had Mr. Tate's name on it then with it folded in back?

A. I would say the name was on it.

Q. Uh huh. Well, this sign was exhibited to other people who were working there, wasn't it?

A. It was.

Q. Yes, sir, so it wasn't actually aimed at Mr. Tate alone, was it, as you say, because he had made signs at you?

Mr. Haynes: Your Honor, we'll ask that he limit this questioning to Mr. Wallace's use of the sign. That's what he is here charged with.

Mr. Rouse: He has testified——

The Court: Overrule the objection. The question is if there was intent involved and any evidence that the jury may think is subject to consideration in that regard is admissible.

Mr. Haynes: Exception.

Q. (By Mr. Rouse) It had been used there the day before without his name on it and with his name on it when he came by it, wasn't it?

A. The sign was there, yes, sir.

Q. And was used?

A. Yes, sir.

Q. Before all of the employees who were going across the picket lines, wasn't it?

A. Yes, sir, but not by me.

Q. Well, I didn't say that. I am just asking you if that wasn't the real purpose of this sign was to exhibit it to the other people who were going in and out to work, wasn't it?

A. Well, I can't answer it for the purpose that the other people were using the sign for.

Q. Uh huh. But, and when Mr. Tate came out, why, everybody, including yourself says, "There comes Tate," and you took it and held it up and flipped Mr. Tate's name up, did you not?

A. I held the sign up, yes, sir.

Q. And you flipped Mr. Tate's name up?

A. I believe so, yes, sir.

Q. And it almost caused an incident there, didn't it, if he had of hit you?

Mr. Haynes: Well, Your Honor, we except to that, the form of the question. Now, it's so indefinite how could he interpret it?

The Court: Well, that's a conclusion. Sustain the objection. You can ask him what took place, not the result.

Q. (By Mr. Rouse) Now, for what purpose were you and others gathered down there next to the underpass? What purpose did you go there for?

A. Well, just to observe actually the amount of people that came out. No other purpose.

Q. To observe the people who were going in to work and coming out from work, wasn't it?

A. Well, not only that. We had picket duty, legal picket duty and certain hours, and we would gather up there at different places to pull our duty whenever we was needed.

Q. Well, the picketing took place up in front of the
43 plant, didn't it?

A. Yes, sir, but you can't gather in front of the plant where the picket line is.

Q. I understand that, sir. But why would you all surge out when these people would come from, to and from work and jeer at them and cat-call them?

Mr. Haynes: Your Honor, I am going to object to that question. He can ask him why he did, if he did, but to ask hi what was in the minds of other people up there is putting him at a terrible disadvantage. He can't do that.

The Court: Overrule the objection. I don't think he was asking what was in the mind. I think he was asking them why they were doing something he did.

Mr. Haynes: Exception.

Q. (By Mr. Rouse) Why were you doing that?

A. I didn't jeer at the man. I cannot answer why.

Q. Why did you hold this sign up there and flip Mr. Tate's particular name? Why was he singled out?

A. Well, due to his conduct when he would come through there, the crowd of people of the evening, he would make those vulgar indications to the people with his fingers, which I stated before, and he also swerved at myself when he come through with his vehicle.

Q. And what was the purpose of the lower part of that sign that was exhibited to the other people that were working there?

A. I didn't exhibit it at other people, so I can't answer why it was.

Q. But you mean that you were there just instanetaneously when Mr. Tate was coming by and you volunteered to hold it up in front of Mr. Tate? Is that what you're telling the jury?

A. No, now, they may have been one or two other vehicles passed prior to Mr. Tate while I had the sign.

Q. Uh huh. You held it up in front of them?

A. I did.

Q. Yes, sir.

A. I had the sign up for approximately 30 seconds to one minute, I had the sign in my hand.

Q. Uh huh. Well, you say you, say you were one of the picketers?

A. Not at that time, I wasn't on picket duty, but you mean did I walk the picket line?

Q. Picket lines.

A. When my time came, yes, sir.

Q. And what was the purpose of the picketing?

A. Well, I am not real good at words.

Mr. Haynes: Your Honor, I am going to object to that. Does he mean the legal purpose or the purpose to whom? This is a question that he can't fairly ask this man.

The Court: Overrule the objection. Of course, he doesn't have to answer except to his own views as to why he was picketing, not why anyone else was picketing.

Mr. Haynes: That's what we would like it limited to.

The Witness: Of course, as you know, we was on strike against Monroe Calculating, and as far as the picket line itself, it was to let the general public know about it. I am not good at words in describing anything like that, and I wouldn't want to go into it.

Q. (By Mr. Rouse) Well, you have signs that says, "On Strike", don't you?

A. We are a bargaining unit, and we do have the right to strike when you have a bargaining unit, a union.

Q. Uh huh. And, I say, you have signs that are carried on the pickets that, showing that "On Strike" and your local labor organization, don't you?

A. Yes, sir.

Q. Isn't that on your signs?

A. That's true.

Q. Why do you have a sign there, "We will remember you"? What does that signify?

A. That was just referring to Mr. Tate's conduct as I said.

Q. But it was exhibited to all of the employees.

Mr. Haynes: Your Honor, it's repetitious.

The Court: I think it's argumentative and repetitious.

46 Mr. Rouse: That's all.

Mr. Haynes: Thank you, come around.

WAYNE O'NEAL

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Haynes:

Q. State your name, please.

A. Wayne O'Neal.

Q. Wayne——

The Court: Take your gum out of your mouth. Wayne—what is the name?

The Witness: Wayne O'Neal.

Q. (By Mr. Haynes) Where do you live?

A. 1645 Maryland Avenue, Bristol, Tennessee.

Q. Married man?

A. Yes, sir.

Q. Where do you work?

A. Monroe.

Q. When Monroe was out on strike, were you striking?

A. Yes, sir.

Q. Were you in the vicinity of Hansel Wallace up there on March the 2nd when he had hold of that sign?

A. I was directly behind him.

Q. All right. Now, where was he standing in relation to the paved portion of the street, and where were you standing?

47 A. He was at least two foot from the pavement.

Q. All right. And where were you?

A. I was directly behind him.

Q. Okay. Now, what did you see him do with the sign when Tate came along in the truck? And tell what happened there as you observed it.

A. Well, I seen him as Tate come under the bridge, he held the sign up in this manner (demonstrating).

Q. All right.

A. And just as Tate got at him, Tate took a swerve to the right and Mr. Wallace went and swung around to get away from the truck and hit me and the sign must have hit the mirror of the truck and flew up in the air and the sign was knocked out of his hand.

Q. All right. Did he in any way strike out with the sign?

A. No, sir.

Q. Or push it out toward the windshield of Tate's truck?

A. No, sir.

Q. Okay. About how long had Hansel had hold of that sign when he got into this?

A. I'd say approximately 30 to 45 seconds.

Q. Okay.

Mr. Hayness: You can cross-examine.

48 **Cross-Examination,**

By Mr. Rouse:

Q. What were you doing there, Mister?

A. Observing Traffic.

Q. What traffic?

A. People coming from Monroe.

Q. And those that went into Monroe?

A. Right.

Q. And you were lined up there with Mr. Wallace and others along the edge of the hard surface, weren't you?

A. Off the pavement, yes, sir.

Q. That's all.

Mr. Haynes: All right, thank you.

JACK BOWERY

having been duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Haynes:

Q. State your name, please.

A. Jack Bowery.

Q. Where do you live, Jack?

A. 200 Rex Road, Bristol, Tennessee.

The Court: How do you spell that name, please?

The Witness: B-o-w-e-r-y.

Q. (By Mr. Haynes) You work up at Monroe?

A. Yes, sir.

49 Q. You work up there now?

A. Yes, sir.

Q. Were you in the vicinity of where Hansel had this sign on March the 2nd?

A. I was standing across the street from him.

Q. Now, about how far is that from the entrance of the Monroe plant?

A. Oh, I'd say it's a hundred yards anyway.

Q. Uh huh.

A. From the entrance to Monroe. It's down on the other side of the underpass.

Q. On the west side of the underpass?

A. (The witness nodded indicating the affirmative.)

Q. You were on the opposite side of the street from Hansel, I believe.

A. Yes, sir.

Q. And did you see him at the time he was holding that sign?

A. Yes, sir.

Q. How was he holding it? Where was he standing in relation to the road?

A. Up like this (demonstrating). He was two or three feet off the pavement holding the sign up like this.

Q. What did Tate do when he approached in the truck?

A. Well, Wallace was holding the sign up like this, and as Tate come down the street, he made a dip at it, and he turned to get away from him. That's when the sign made contact with the truck.

Q. Did Hansel in any way thrust his sign out or push it out toward the truck or strike out with it at any time?

A. No, sir.

Mr. Haynes: You can cross-examine.

Cross-Examination,

By Mr. Rouse:

Q. Approximately how many of the Monroe employees on strike would you say was there in the vicinity of you?

A. Oh, I'd say around 70, 75, something like that.

Q. Uh huh. And cars were backed up, parked on both sides, were they?

A. Off the pavement.

Q. Off of the pavement. And how far back up toward Lee Highway would say say they were?

A. I was down next to the underpass.

Q. Pretty good crowd there, wasn't it?

A. There were 70, 75, I'd say.

Q. Uh huh. And all of you were on strike, or the majority of you?

A. Yes, sir.

Q. Both men and women?

A. Yes, sir.

51 Q. That's all.

Mr. Haynes: All right, thank you.

The defendant rests, Your Honor.

The Court: Is that all the evidence?

Mr. Rouse: Yes, Your Honor.

The Court: Let the jury retire to their room while we consider the instructions, please.

(Thereupon, the jury retired from the open courtroom, and the following proceedings were had out of the presence of the jury.)

Mr. Haynes: If it please the court, might we consider our motion to strike at the close of all the evidence now?

The Court: All right, the court will overrule the motion for the same reasons as stated.

Mr. Haynes: Exception.

(Thereupon, the commonwealth offered Instruction I.)

"INSTRUCTION NO. I.

"The Court instructs the jury that if you believe from the evidence, beyond a reasonable doubt, that the defendant singly or in concert with others interferred (sic) or attempted to interfere with Robert Tate in the exercise of his right to work at Monroe Calculating Company by the use of force, threats or violence or intimidation, or by the use of in-

52 sulting or threatening language directed toward him, to induce him to quit his employment or re-

frain from continuing his employment, you shall find the defendant guilty as charged and fix his punishment at a fine not in excess of five hundred dollars and confinement in jail not to exceed twelve months, either or both, in the discretion of the jury."

The Court: Any objection to the commonwealth's No. 1?

Mr. Bird: Your Honor, I believe this should, I believe it's the 1-2-3-4, on the 6th line down, you probably should say "threats of violence" rather than "threats or violence."

Mr. Rouse: I don't know whether that's in the statute or not.

Mr. Bird: I think that's the way the statute reads, "threats of violence or intimidation." You have got "threats or violence."

The Court: As a matter of fact, there is another pair of words there "to induce" and you have left out "induce or attempt to induce."

Mr. Rouse: Oh, law, I left that for the girl to copy. I wrote it out in longhand there. "Or attempt to induce" has been written in there.

The Court: Instruction No. I is given.

53 "INSTRUCTION NO. I (Given).

"The Court instructs the jury that if you believe from the evidence, beyond a reasonable doubt, that the defendant singly or in concert with others interferred (sic) or attempted to interfere with Robert Tate in the exercise of his right to work at Monroe Calculating Company by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward him, to indnce or attempt to induce him to quit his employment or refrain from continuing his employment, you shall find the defendant guilty as charged and fix his punishment at a fine not in excess of five hundred dollars and confinement in jail not to exceed twelve months, either or both, in the discretion of the jury."

(Thereupon, the commonwealth offered Instruction No. II.)

"INSTRUCTION NO. II (Given).

"The court instructs the jury, as a matter of law, in considering the case, the jury is not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely imaginary or conjectural. A doubt to justify an acquittal must be a reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same kind
54 of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction of the truth of the charge, you are satisfied beyond all reasonable doubt. On the other hand, the jury must not go beyond the evidence to hunt up inferences of guilt."

The Court: Any objection to No. II? That's the commonwealth's version of a reasonable doubt.

Mr. Bird: No objection.

The Court: All right. Let's see what you are offering on behalf of the accused.

Call these A, B, and C, and so forth.

(Thereupon, counsel for defendant offered Instruction A.)

"INSTRUCTION NO. A (Given).

"The Court instructs you that the Commonwealth must prove beyond a reasonable doubt that the threatening language, if you find the language to be threatening, must have been directed toward Mr. Tate to induce, or attempt to induce, him to quit his employment."

Mr. Rouse: Your Honor, that's just, that isn't, I object to that instruction. It's just singling out, "And if you

find the language to be threatening, must have
55 been directed toward Mr. Tate to induce, or attempt to induce him to quit his employment."

The Court: Induce or attempt to induce.

Mr. Bird: Yes, sir, we would amend that.

The Court: The only objection I have is underscoring one particular word. That's not proper. We'll add "induce or attempt to induce."

I expect you are going to have it get it rewritten. That's the only way I know to get rid of the underscoring. As corrected, Instruction A is given.

Mr. Bird: Okay, thank you.

The Court: Call that capital B.

(Thereupon, counsel for defendant offered Instruction B.)

"INSTRUCTION NO. B (Given).

"The Court instructs the jury that the defendant is presumed to be innocent until his guilt is established by the Commonwealth, beyond all reasonable doubt, and this presumption of innocence goes with him through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the warrant, it is their duty to give the
56 defendant the benefit of the doubt and find him not guilty."

Mr. Rouse: Yes, sir, I have no objection.

The Court: B is given.

(Thereupon, counsel for defendant offered Instruction C.)

"INSTRUCTION NO. C (Given).

"The Court instructs the jury that the defendant is presumed to be innocent until proven guilty beyond all reasonable doubt, and the burden is upon the Com-

monwealth to prove his guilt, and not upon the defendant to prove his innocence."

Mr. Rouse: That's just a repetition of B, Your Honor. Object to it.

Mr. Bird: Your Honor, it's exactly the same instruction that was given yesterday. I think both were given in that.

The Court: The other is presumption of innocence and burden of proof, but it seems that both are included in——

Mr. Rouse: This instruction is included in the first line.

The Court: In B. Well, I'll give C as covering the burden of proof rather than the presumption of innocence. C is given.

(Thereupon, counsel for defendant offered Instruction D.)

57 "INSTRUCTION NO. D (Given).

"The Court instructs the jury that the defendant in this case had the right to picket the employer in a lawful manner because there was a labor dispute between the union of which the defendant was a member on the one hand and the employer on the other hand."

Mr. Rouse: Your Honor please, there is no question of picketing in this case that I know of. These people didn't even claim to be on picket. As a matter of fact, the defendant testified he wasn't picketing at the time of this occurrence.

The Court: Well——

Mr. Bird: There was a question, Your Honor, directed if he was a picket, if he was picketing.

Mr. Rouse: He testified that he was not picketing.

Mr. Bird: At the time, but that he was, his duty to go there was to picket and that was the reason he was in the vicinity.

The Court: Well, the only objection I see to the instruction is that it leaves out the vital statement, "In a lawful manner."

Mr. Rouse: That's right.

Mr. Bird: Right after "employer"?

The Court: After "employer."

Mr. Bird: Yes, sir.

58 The Court: Well, the court will give D. I presume under the circumstances it's not the presence or absence of a sign that determines whether a man is there necessarily as a part of the picket line is more or less immaterial under this evidence, but the court will give D with that insertion.

Any others?

Mr. Bird: Yes, Your Honor, E.

The Court: That's E?

Mr. Bird: Yes, Your Honor.

The Court: Now, that gets down close to the question of whether he actually was picketing as a picket in a picket line and makes that a determining factor in the case which is not true. The question is the effect of his conduct other than picketing. It's not whether he is picketing or not, but whether he was acting in such a manner as to interfere with another.

Mr. Bird: Your Honor, I withdraw that instruction then.

The Court: Ten minutes to the side sufficient, gentlemen?

Mr. Haynes: Yes, Your Honor.

The Court: All right. Call back the jury please.

(Thereupon, the jury returned to the open courtroom, and the following proceedings were had in open court before the jury.)

59 The Court: All right. Proceed with the argument—let me give you the instructions first.

Gentlemen, give attention to the instructions.

(Thereupon, the court read Instructions I, II, A, B, C, and D.)

The Court: If you find the accused guilty, your verdict will read something like this, "We, the jury, find the ac-

cused guilty as charged and fix his punishment at"— whatever punishment would be fixed.

If you find the accused not guilty, your verdict would read something like this, "We, the jury, find the accused not guilty."

In either event, the verdict is signed by the man you select as your foreman with the word "Foreman" underneath his signature.

Proceed with the argument.

(Thereupon, counsel for both sides presented final argument to the jury.)

The Court: Mr. Sergeant, see that the room is clear. Gentlemen, retire. Take the instructions. Write your verdict on this piece of paper which has a heading for a verdict, and here is a piece of scratch paper.

Knock when you are ready to report.

(Thereupon, the jury retired from the open courtroom at 11:55 o'clock, a. m., to deliberate and returned at 12:10 o'clock, p. m.)

The Court: Gentlemen, have you agreed upon a verdict?

Foreman: Yes, sir, we have, Your Honor

The Court: I'll read the verdict, but I'll have to send the jury back to reframe it. It reads as follows, "We, the jury, find the defendant guilty as charged and fix his punishment as follows, (1) $300 fine; (2) six months suspended sentence. Ralph Parrott, Foreman."

Now, gentlemen, juries in Virginia have no voice in determining whether or not a sentence should be suspended. That being true, I assume that you fixed this sentence in the light of the fact that you thought you had authority to direct that it be suspended. So since you do not have that authority, I don't think the court should receive the verdict until you have had an opportunity to consider your verdict in the light of the law with reference to suspended sentence.

So I'll ask you, please, to retire and leave off this matter about suspended sentence and then determine what your punishment, what punishment you want to fix, if you find the accused guilty.

(Thereupon, the jury retired from the open courtroom and returned shortly and the following proceedings were had in open court before the jury.)

The Court: Have you agreed upon a verdict, gentlemen?

61 Foreman: Yes, sir, we have, Your Honor.

The Court: Read the verdict.

The Clerk: "We, the jury, find the defendant guilty as charged."

The Court: Is Mr. Rouse here? It doesn't matter, go ahead.

The Clerk: "We, the jury, find the defendant guilty as charged and fix his punishment as follows, $300 fine, six months' sentence. Ralph Parrot, Foreman."

The Court: Is that your verdict, gentlemen so say ye all?

The Jury: Yes, sir.

The Court: Let the verdict be recorded.

Is there any motion?

Mr. Haynes: Yes, Your Honor, we have a motion.

The Court: Well, gentlemen, that completes your work for today and you all are excused until next Monday at nine o'clock. Thank you very much for your attendance.

We'll hear your motion as soon as the jury has gone.

(Thereupon, the jury retired from the courtroom, and the following proceedings were had out of the presence of the jury.)

Mr. Bird: Your Honor, on behalf of the defendant, Hansel Wallace, counsel would like to move to set

62 aside the verdict of the jury and suspend the sentence here. It seemed that it was an excessive and a harsh sentence under the circumstances of this thing and it would tend to impassion this thing and raise more

problems in the community with this stiff sentence, strict sentence were given at this time and that we would respectfully request the court to suspend the sentence of six months and to, to suspend the sentence of six months and to set aside the verdict of the jury.

The Court: The court will overrule the motion to set aside the verdict. It's supported by evidence which, if the jury accepts, is sufficient to sustain a verdict.

Now, as to the motion to suspend the execution of the jail sentence, and I guess you meant to include "and let him to probation"——

Mr. Bird: Yes, sir.

The Court: Mr. Rouse, does the commonwealth know of any reason why he is not a proper subject for that consideration?

Mr. Rouse: None whatever, no, sir.

The Court: Well, the court, if you are ready for sentence, the court will impose sentence and the court will then suspend the serving of the jail sentence, release him on probation under the usual conditions.

Mr. Bird: We'd like to note an exception to that.

Mr. Haynes: Yes, sir.

63 The Court: Do you have anything to say before the court pronounces sentence according to the jury verdict?

Mr. Haynes: No, Your Honor.

The Court: Accordingly, the sentence is payment of fine of $300 and costs. You're sentenced to confinement in jail for a period of six months, but the jail sentence is suspended and you are released on probation subject to the general conditions of probation. And the court will fix as a period of probation the next 18 months. And a part of the conditions of probation will be that you pay a half of the fine and costs within six months from now and the other half within twelve months from now.

Anything further, Mr. Rouse?

Mr. Rouse: No, Your Honor.

The Court: You are released on probation.

Mr. Bird: Your Honor, we would like to note an appeal in the matter and to show——

The Court: All right.

Mr. Bird: Your Honor, we would ask, for the matter of record, we would accept to the refusal of the court to set aside the verdict on the ground that the evidence is insufficient to support the verdict of the jury.

The Court: All right, let the record show then that the defendant excepts to the action of the court and signifies his intention to apply to the Supreme Court for a
64 writ of error.

Since the court has given time for the payment of fine, there is no need of suspending execution of the judgment because none of it will go into effect at this time.

In other words, you have got your full time for perfecting your application for a writ of error before anything that is imposed on him will go into effect. So I see no need of suspending the execution of the judgment because it's all suspended anyway.

These Were All the Proceedings Had and Evidence Introduced in the Trial of the Above Styled Cause.

---

65 The foregoing transcript of evidence and incidents of trial, typewritten pages, pages 1 through 64, inclusive, approved.

/s/ D. B. Rouse,
Commonwealth's Attorney.

/s/ Daniel W. Bird, Jr.,
/s/ David S. Haynes,
Counsel for Defendant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

~~1154~~

OCTOBER TERM, 1967.

HANSEL WALLACE,
Petitioner,

vs.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Certiorari to the Supreme Court of Appeals for the Commonwealth of Virginia and the Corporation Court of Bristol, Virginia.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI.

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IN THE

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SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI.

ORDER.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1967.

The petition of Hansel Wallace for a writ of error and supersedeas to a judgment rendered by the Corporation Court of the City of Bristol on the 4th day of May, 1967, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor, having been maturely considered and a transcript of the record of the judgment

aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said corporation court.

A Copy,
Teste:
/s/ H. Sturm,
Clerk,

A True Copy,
Bertha R. Drinkard, Clerk,
By: /s/ Edwina H. Mull,
Deputy Clerk.

(Seal)

JUDGMENT.

VIRGINIA:

Corporation Court of the City of Bristol, on Thursday, the 4th day of May, in the year of our Lord, Nineteen Hundred and Sixty-Seven.

Present:
The Hon. Jos. L. Cantwell, Jr., Judge.

Commonwealth,
vs.
Hansel Wallace.
} Viol. Sec. 40-64, Code of Va.

This day came the Attorney for the Commonwealth and the accused appeared pursuant to his recognizance and pled not guilty to the charge in the warrant. Accused was represented by counsel.

Thereupon, the following jury was summoned, selected and impanelled in the manner prescribed by law, to-wit:

R. H. Nichols, Jack D. Gray, Ben F. Morgan, Vance W. Thomas and Ralph Parrott, who were sworn to try the case, and after hearing the evidence of the Commonwealth, defendant, by counsel, moved the Court to strike the evidence which motion the Court doth deny. After hearing the remainder of the evidence, receiving instructions from the Court and hearing the argument of Counsel, the jury retired to their room to consider of a verdict and after some time, returned into Court having found the following verdict, to-wit:

"We, the jury, find the defendant guilty as charged and fix his punishment as follows.

1. $300.00 fine;.
2. Six Month sentence.

s/ Ralph Parrott, Foreman."

Defendant, by counsel, moved the Court to set aside the verdict as contrary to the law and the evidence and without evidence to support it, which motion the Court doth overrule. Defendant, by counsel, excepts.

Defendant moved the Court to suspend the six-month jail sentence.

In accordance with the verdict of the jury, it is considered by the Court that the said Hansel Wallace suffer a punishment by confinement in jail for a term of six (6) months and payment of a fine of $300.00 and the costs of this prosecution. In default in the payment of said fine and costs, it is ordered that he be further confined as the law in such cases provides, unless said fine and costs be sooner paid.

It appearing compatible with the public interest, execution of said six-month jail sentence is suspended and the defendant let to probation for a period of eighteen (18) months from this date, conditioned upon his good be-

havior and upon compliance with the General Conditions of Probation of this Court, of record in Common Law Order Book 18, Page 18, and upon further condition that the defendant pay one-half of the fine and costs within six months and the other one-half within twelve months.

Defendant signifying his intention to apply to the Supreme Court of Appeals for a writ of error herein, execution of this sentence is suspended for a period of 60 days.

Thereupon, the accused was let to bail, his present bond being in force.

A Copy, Teste:

Bertha R. Drinkard,

Clerk,

(Seal)

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IN THE

Supreme Court of The United States

No. 1154

OCTOBER TERM, 1967.

HANSEL WALLACE,
Petitioner,

vs.

COMMONWEALTH OF VIRGINIA,
Respondent.

REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI.

DICK B. ROUSE
Reynolds Arcade Building
Bristol, Virginia
Commonwealth Attorney for the
City of Bristol, Virginia

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IN THE

Supreme Court of The United States

HANSEL WALLACE

Petitioner

vs.

COMMONWEALTH OF VIRGINIA

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO: THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF APPEALS

PRELIMINARY STATEMENT

The petitioner, sometimes hereinafter referred to as "Appellant", was convicted in the Corporation Court of Bristol, Virginia, by jury trial on the charge of being in violation of Section 40-64 of the Code of Virginia, and sentenced to the payment of a $300.00 fine and six months in jail. Immediately after the verdict was rendered by the jury upon motion of appellant, the Court suspended the six months jail sentence imposed by the jury. Appellant now seeks to reverse this conviction as contrary to the law and without evidence to support the verdict and other grounds assigned in his petition.

In referring to the record, the symbol "R" will be used to indicate court papers, and "TR" will be used to indicate the transcript.

STATEMENT OF FACTS

The appellant was tried in the Municipal Court for the City of Bristol upon a warrant charging violation of Section 40-64 of the Virginia Code and convicted, to which judgment appellant appealed the case to the Corporation Court for the City of Bristol, and there tried by a jury at the May term of Court, 1967.

The section under which he was charged provides as follows:

"No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

"No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public place . . . etc.

"Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly."

The alleged incident occurred on March 2, 1967, in Bristol, Virginia. At that time, the Monroe Calculating Company Plant was undergoing a strike and had been for some period of time prior to that date. Feeling was running high between the striking employees and those employees who remained on the job. The appellant, Wallace, was a picketing striking employee. Tate, the prosecuting witness, was a member of the union which had called the strike but who chose to continue working because he did not agree with the union's decision to strike. The strikers would form lines on both sides of the highway to the approaches

to the entrances to the Monroe Calculating Company's Plant and would jeer and harrass those employees who chose to continue going in and out of the plant to perform their regular duties. Appellant, Hansel Wallace, was with a number of striking employees who were standing along said approaches to the plant at approximately 3:30 to 3:45 P.M. on that date. At that time and place, the non-striking employee, Ted Tate, was driving his Dodge pick-up truck from his place of employment when Hansel Wallace held up a large sign nailed to a stick of wood which read in large block letters, "We will remember you" and as Tate approached, he flipped another portion of the sign which had in large block letters, "T A T E" (TR 6, lines 1-11) making it read "Tate, we will remember you". As Mr. Tate approached this assembled crowd, he observed that the strikers were lined up on both sides of the road and crowding on to the hard surface of said road and he placed his pick-up truck in second gear in order to slow it down and have it under better control in the event that any of the crowded strikers came into danger of being struck by his vehicle. As he came along side appellant, Wallace, he stated that Wallace, who was holding the sign up for him to see, "hit down over the windshield with the sign" (TR 6, lines 1-22). Tate very frankly admitted that his truck may have wobbled in the road or that he turned it away from other strikers toward Wallace.

The feeling had been running so high during the strike that a number of officers were strategically placed in the vicinity of the plant where the strikers were congregating and when this occurrence took place, Captain Kristofek of the Bristol, Virginia, Police Department, felt that the driver of the truck, Tate, had "cut a dip at the strikers", and he immediately pulled Tate over to the side of the road for the purpose of charging him with violation of the law. And while he, Captain Kristofek, was sitting in the cab of the truck with Mr. Tate to see his driver's permit before making a charge against him, the appellant, Wallace, accompanied by other strikers, came up to the truck and stated directly to Tate "I will remember you" and "I'll see you later, old man" (TR 7, lines 2-25). Mr. Tate was

charged with an attempted assault with his vehicle which charge was later dismissed, and the charges against the appellant followed thereafter of which he is now seeking for writ of certiorari.

ARGUMENT

As stated above, it is the contention of the appellee, Commonwealth of Virginia, that the only issue that is not facetious is the question as to whether there was sufficient evidence upon which to sustain verdict of the jury.

Mr. Tate testified that he was fifty-two years of age; that he was, at the time of the incident and for some time prior to the incident, a member of the striking union and had been employed for a period of three years by Monroe Calculating Company (TR 4, lines 7-25). He testified that there were approximately seventy-five to eighty strikers on either side of the highway when the incident took place and were crowding out on to the hard surface of the roadway (TR 8, lines 6-19), and that he was called names; Officer Smith of the Bristol, Virginia, Police Department corroborates Mr. Tate's testimony by stating on TR 15 that when Tate approached the crowd of strikers in which appellant was among that they did shout "here he comes" and that Wallace held up the sign with "Tate, we will remember you", and as the truck passed Wallace, "the sign hit the truck and the sign made contact". Officer Smith also testified (TR 16, lines 13-18) that the crowd which included appellant Wallace, at the time of the occurrence, were using profanity and other violent language. Officer Joe Honaker, on Page 19 (TR lines 3-6, Page 20), corroborates Tate and Smith as to what took place, the number of strikers involved, their conduct, their singling out of Tate and his vehicle, and described the manner in which the sign singled out Tate.

Captain Andrew Kristofek of the Bristol, Virginia, Police Department, who arrested Tate, corroborates Mr. Tate's testimony about the lettering on the sign, the sign

coming into contact with the truck (TR 23, 24, & 25). On TR 25, lines 1-5, he states, "Hansel Wallace was standing right near the door as I got in the cab, I was in the driver's side, he said, Old Man, we will remember you, and Mr. Tate said to me while I was in the cab, do you hear that? I said yes, move on, we are going to headquarters". Corroborating Mr. Tate's testimony that Wallace, in the presence of other strikers, made the threatening statement directly to Tate.

Appellee submits that there was sufficient evidence for the jury to find the verdict rendered in this case. Mr. Tate, as an employee of Monroe Calculating Company and as a member of the union and as a member of society is entitled to the protection provided by Section 40-64 of the Code of Virginia in his inherent right to work free from the clear and present danger of harm by those who by the use of force, threats, violence, intimidation, or insulting words would prevent the exercise of that right. It is the contention of the Commonwealth that the appellant by his actions and words were in direct controvention of the statute and that his actions were so inherently wrong and liable as to bring about an immediate breach of the peace which was only averted by the presence of the Bristol, Virginia Police Officers at the scene of the offense on the day in question.

CONCLUSION

The judgment of the jury is plainly right and the Petition For Certiorari should accordingly be denied.

Respectfully submitted,

Dick B. Rouse
Commonwealth's Attorney
for the City of Bristol, Virginia

DICK B. ROUSE
Attorney at Law
Reynolds Arcade Building
Bristol, Virginia

I, Dick B. Rouse, counsel for Respondent, Commonwealth of Virginia, certify that on the 31st day of May, 1968, a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed to David S. Haynes of Curtin, Haynes and Winston, Attorneys at Law, Bristol, Tennessee, and to Daniel Woodrow Bird, Jr., Wytheville, Virginia, Counsel for Appellant.

Dick B. Rouse
Commonwealth Attorney
City of Bristol, Virginia